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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,899	11/03/2003	William C. Kimbrell	5657	4370

7590 07/16/2007
John E. Vick
Legal Department, M-495
PO Box 1926
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,899

Applicant(s)

KIMBRELL ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 9-17, 50 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 9-17, 50, and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed April 26, 2007, has been entered. Claims 1-6, 8, and 18-49 have been cancelled. Thus, the pending claims are 7, 9-17, 50, 51.
2. The cancellation of claims 1-6, 8, and 18-49 renders moot the rejections set forth against said claims as set forth in the last Office Action (Non-Final Rejection mailed 08/10/06).
3. The prior art rejection based upon the cited Wang reference (US 5,908,663) in view of Fang reference (US 2005/0062010) as set forth in section 6 of the last Office Action is hereby withdrawn due to applicant's statement of co-assignment according to 35 USC 103(c) of the present application and the Fang secondary reference. However, the following rejections are maintained.
4. The examiner apologizes for any misunderstanding of the prior art rejections of the last Office Action. Specifically, the rejections were intended to be three separate rejections (i.e., (i) Wang in view of Fang, (ii) Wang in view of Rearick, and (iii) Wang in view of Fitzgerald). As such, the second and third rejections are not affected by the removal of the Fang reference. In light of the confusion over the rejection, the present Office Action is not made final.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 7, 9-11, 13-17, 50, and 51 stand rejected under 35 USC 103(a) as being unpatentable over US 5,908,663 issued to Wang et al. in view of US 2002/0064639 and/or US 2004/0058072, both issued to Rearick et al. as set forth in section 6 of the last Office Action.

7. Claims 7, 9-11, 13-17, 50, and 51 stand rejected under 35 USC 103(a) as being unpatentable over US 5,908,663 issued to Wang et al. in view of US 6,451,717 issued to Fitzgerald et al. as set forth in section 6 of the last Office Action.

8. Claim 12 stands rejected under 35 USC 103(a) is rejected over the cited Wang reference in view of the cited Rearick references as applied to claim 11 above and in further view of US 5,573,553 issued to McBride et al. as set forth in section 8 of the last Office Action.

9. Claim 12 stands rejected under 35 USC 103(a) is rejected over the cited Wang reference in view of the cited Fitzgerald reference as applied to claim 11 above and in further view of US 5,573,553 issued to McBride et al. as set forth in section 8 of the last Office Action.

Response to Arguments

10. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

11. Applicant traverses the above rejection by arguing "while it may be possible to apply the treatment compositions of Wang to scoured carpeting, there appears to be no motivation in the primary reference itself for doing so" (Amendment, paragraph spanning pages 9-10). In response, it has been held that disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become

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patentable simply because it has been described as somewhat inferior to some other product for the same use.” *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994) (The invention was directed to an epoxy impregnated fiber-reinforced printed circuit material. The applied prior art reference taught a printed circuit material similar to that of the claims but impregnated with polyester-imide resin instead of epoxy. The reference, however, disclosed that epoxy was known for this use, but that epoxy impregnated circuit boards have “relatively acceptable dimensional stability” and “some degree of flexibility,” but are inferior to circuit boards impregnated with polyester-imide resins. The court upheld the rejection concluding that applicant’s argument that the reference teaches away from using epoxy was insufficient to overcome the rejection since “Gurley asserted no discovery beyond what was known in the art.” 27 F.3d at 554, 31 USPQ2d at 1132.).

12. Applicant also traverses on the grounds that the combined teachings of Wang and Rearick would teach away from the present invention (Amendment, page 10, 1st paragraph). Specifically, applicant asserts “cross linking between the applied cross-linkable fluorochemical and the fiber would likely be viewed as being inconsistent with the goal in the primary reference of Wang of avoiding degradation of the fabric hand” (Amendment, page 10, 1st paragraph). This argument is found unpersuasive since Rearick teaches the fluorocarbon-treated fabrics have a soft hand (Rearick ‘639, sections [0190], [0196], and [0222]). Therefore, the above rejections are maintained.

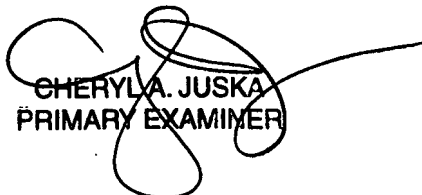
Conclusion

13. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYLA. JUSKA
PRIMARY EXAMINER

cj
July 5, 2007